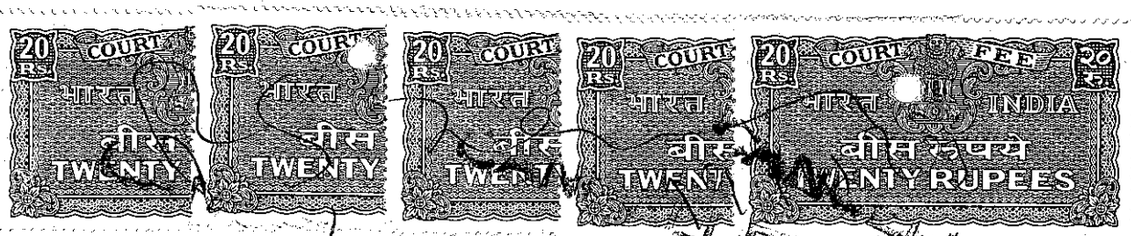


(3)

IN THE HIGH COURT OF JUDICATURE: AT JABALPUR

W.P.No. 5066 OF '99

PETITIONER

I.P.Gupta S/o.Sri H.L.Gupta
Posted as BEE Primary Health
Centre,Masturi,Dist.Bilaspur

VERSUS

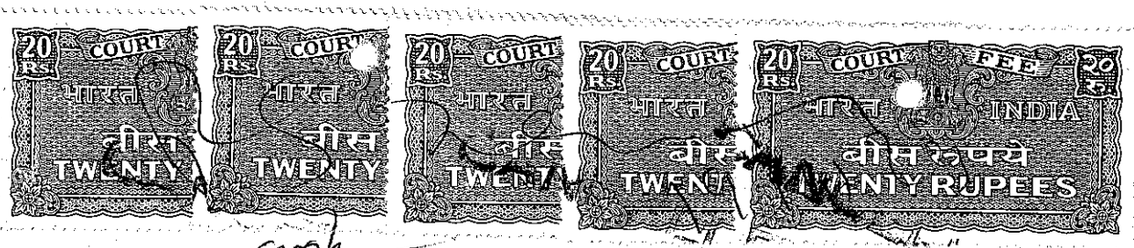
ONDENTS:

1. ~~The State of Madhya Pradesh
Through: The Secretary of
Health,Vallabh Bhawan,
Bhopal.~~

2. ~~The Director,~~
Health Services,
~~Vindhyachal Bhawan,~~
~~Bhopal.~~

3. The Joint Director of Health
Services,Bilaspur Division,
Bilaspur (MP).

PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA



(3)

IN THE HIGH COURT OF JUDICATURE: AT JABALPUR

W.P.No. 5066 **OF '99**

PETITIONER I.P.Gupta S/o.Sri H.L.Gupta Posted as BEE Primary Health Centre,Masturi,Dist.Bilaspur

VERSUS

Respondent No 1: State of Chhattisgarh,Through The Secretary, Department of Health,D K S Bhavan, Mantralaya Raipur(CG)

Attested Sd/- AR(J)

RE

Amended vide Court order dtd 17.7.03

Attested

D.R.(J) 29/9/9

Respondent No2: The Director, Health Services, Govt. of Chhattisgarh, D K S Bhavan, Raipur(CG)

29.9.01

Amended vide Court order dated 24-9-'01

4. Respondent : State Administrative Tribunal (M.P) Bench at Raipur. Raipur.

29.9.01

(78)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 5066/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8-4-2004

Shri P.S. Koshy, counsel for the petitioner.

Shri Sanjay S. Agrawal, Panel Lawyer for the State.

Heard.

This petition is filed against the order dated 6-10-99 passed by the State Administrative Tribunal, Raipur. In the Tribunal, the petitioner had challenged the order dated 12-7-95 passed by the Joint Director, Health Services, Bilaspur. The said petition before the Tribunal was filed on the ground that the petitioner was working as Computer w.e.f. 16-3-67 in the Health and Family Welfare Department of Govt. of M.P.. In May 1985 he was promoted as Block Extension Educator. The petitioner was transferred from Sarguja to the Community Health Centre, Masturi in District Bilaspur in July 1994. The wife of the petitioner who is also working as Staff Nurse in the Health and Family Welfare Department of Govt. of Madhya Pradesh was also transferred from Sarguja to Masturi in 1994.

It is contended that on 6-7-95 the petitioner was transferred from Masturi to Primary Health Centre, Kota for a period of three months but thereafter he was kept permanently there. The petitioner made a prayer for his re-transfer. He made representation dated 10-7-95 to the Joint Director, Health

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(79)

आदेश पत्रक

मामला क्रमांक W.P.5066/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Services, Bilaspur for canceling his transfer. In the alternative, he also made a prayer that if his transfer is not cancelled, the representation may be treated as resignation in protest against injustice.

By letter dated 18-7-95 the Principal Health Secretary and Family Welfare Training Centre, Bilaspur directed the petitioner to deposit one month salary in lieu of notice period for acceptance of his resignation. The Tribunal considered the letter Annexure-A/4, letter of resignation, which was accepted as per Annexure-P/2 and the application filed was rejected.

Learned counsel appearing for the petitioner relied on a decision reported in **(2003) 1 Supreme Court Cases 701** in the matter of **Dr. Prabha Atri Versus State of U.P. and others.** Counsel relied on paragraphs 10 & 11 of the said judgment. While dealing with the matter the Hon'ble Apex Court has held that:

> "To constitute a "resignation", it must be unconditional and with an intention to operate as such." There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, as office."

[पीछे देखिये

(8.6)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The petitioner was permanent employee and he has put in 29 years of service. The petitioner was required to deposit one month salary in lieu of the notice. In the matter of **Moti Ram v. Param Dev** reported in **(1993) 2 SCC 725** the Hon'ble Apex Court has held that 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office.'

We have gone through the contents of the letter. In our opinion, the letter cannot be construed to convey any spontaneous intention to give up or relinquish the office accompanied by any act of relinquishment. To constitute a "resignation", it must be unconditional and with an intention to relinquish a portion of the term of office. In the present case request was made by both husband and wife for transfer. Under the facts and circumstances tendering resignation by the petitioner may amount to a threatened offer, more so on account of exasperation, on account of a feeling of frustration born out of an idea that the employee was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple.

In this case, the petitioner has served for 29 years. Therefore, having considered the facts and circumstances of the case and material on record, we are of the opinion that the order of

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(81)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

acceptance dated 12th July 1995 should be set-aside. It is accordingly set-aside. Consequently, the order dated 6-10-99 passed by the Tribunal is also set-aside. It is directed that the petitioner be reinstated.

With the directions aforesaid, the petition stands disposed of.

Certified copy as per Rules.

Sd/-
Fakhruddin
Judge

Sd/-
L.C.BHADOO
Judge

Barve

[पीछे देखिये